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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

RANDALL'S ISLAND FAMILY GOLF
CENTERS, INC., *et al.*,

Case Nos. 00-41065 through
00-41196 (SMB)

Debtors.

(Jointly Administered)

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**LIMITED OBJECTION OF NEW ROC ASSOCIATES, L.P.
TO PROPOSED LANDLORD CREDIT BID PROCEDURES**

TO THE HON. STUART M. BERNSTEIN,
CHIEF U.S. BANKRUPTCY JUDGE:

New Roc Associates, L.P. ("New Roc"), by its attorneys DelBello Donnellan Weingarten Tartaglia Wise & Wiederkehr, LLP, objects to the credit bid procedures for landlords set forth in Section E, ¶ 8 of the above-captioned Debtors' proposed Bidding Procedures for bids on the sale of the Debtors' interest in certain fee properties, non-residential real property leases and other assets (the "Bidding Procedures"), and respectfully states the following:

1. New Roc is the lessor under a lease with debtor Sports Plus of New Rochelle, Inc.¹ for approximately 138,000 square feet of space at New Roc City, a complex comprised of a hotel, retail commercial space, a residential apartment building and the Sports Plus family entertainment center in New Rochelle, New York. The site is identified by the Debtors as Store # 507 in Exhibit A to the Bidding Procedures.

2. Section E of the Bidding Procedures, entitled Bidding by Landlords, provides, *inter alia*, that (a) a landlord bidding its own lease must waive and release any claims it has against the Debtors including those pursuant to § 502(b)(6) of the Bankruptcy Code ("Code"), except for claims covered by insurance and post-petition rent claims², and (b) a landlord may only credit bid an amount that is mutually acceptable to the Debtors and the landlord or as determined by the Court. New Roc submits that this standard invites uncertainty and dispute between the Debtors and a landlord, and that the criteria for determining the amount of a credit bid should be uniform for all landlords and clearly spelled out in the Bidding Procedures.

¹ Case no. 00-41176 (SMB).

² The Lease Termination Agreement that a credit-bidding landlord is required to sign provides for a waiver of post-petition rent claims, contrary to the Bidding Procedures.

3. New Roc suggests that the amount of a landlord's credit bid should be equal to the claims that the landlord is required to waive and release as a condition of its bid. These are identified in ¶ 3 of the proposed Lease Termination Agreement, and are comprised of all claims the landlord has against the Debtors and their affiliates arising out of the lease including damages that the landlord has suffered or would suffer if the lease is rejected. Specifically, these claims *should* include (i) the cure amount including all unpaid pre- and postpetition rent and other charges and obligations due under the lease that would be required to be paid to the landlord pursuant to § 365(b)(1)(A) of the Code, and compensation for actual pecuniary loss under § 365(b)(1)(B) of the Code, if the lease were assumed, *plus* (ii) administrative expense claims of the landlord pursuant to § 503(b) of the Code, *plus* (iii) claims under § 502(b)(6) of the Code that the landlord would be entitled to if the lease were rejected, *plus* (iv) any other quantifiable claim that would be released. These are all claims that are capable of being liquidated and represent real dollar amounts that a landlord is giving up if it is the successful bidder for its property.

4. The logic for including rejection damages in the credit bid amount is straightforward. If there is no buyer at auction (either because there is no bidder or the Debtors reject the offer) and the Debtor thereafter rejects the lease, the landlord would recover the property and have an allowed claim under § 502(b)(6). If the landlord credit bids the lease, it would also recover the property, but unless the rejection damages are included in the bid amount the landlord would lose that claim under the Debtors' proposal. In both cases, the landlord recovers the leasehold and can re-let it to a new tenant, but under one scenario – the Debtors' – the landlord loses a potentially valid claim. Between these two choices, it is better for the landlord if the Debtor rejects the lease, but for the Debtor rejection creates 502(b)(6) liability. Allowing the landlord to credit bid the amount of rejection damages increases the odds that there will be a purchaser at auction, while decreasing the claims against, and liability of, the estate. Finally, if a third party is the highest and best bidder, meets all of the Code requirements for assumption and assignment and acquires the leasehold, the *Debtors* are prejudiced if the landlord's credit bid cannot include potential rejection damages. Including rejection damages in the credit bid amount increases the price that a third party would have to pay for the lease, which benefits the Debtors.

WHEREFORE, for the foregoing reasons, New Roc requests that the Court's approval of the Bidding Procedures be conditioned upon adopting the foregoing formula for determining the landlord credit bid amount.

Dated: White Plains, New York
January 18, 2001

DELBELLO DONNELLAN WEINGARTEN
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CERTIFICATION OF SERVICE

I hereby certify that I served a copy of the foregoing *Limited Objection of New Roc Associates, L.P. to Proposed Landlord Credit Bid Procedures* on January 18, 2001 upon Jonathan L. Flaxer, Esq., counsel for the Debtors, by fax at (212) 754-0330 and e-mail at jflaxer@golenbock.com.

/s/ Howard P. Magaliff _____